IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2305 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MITHIBEN RAJABHAI CHHOTALA

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioners

Mr.V.M.Pancholi, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 29/06/2000

ORAL JUDGEMENT

1. By filing this writ petition under Article 226 of the Constitution, petitioners, who are owners of agricultural land bearing Survey No.253/1 of village Varal, Taluka Sihor, District Bhavnagar, have prayed to issue writ of mandamus or in the nature of mandamus declaring acquisition proceeding bearing No.3 of 1998 as illegal, arbitrary and violative of Article 14 of the Constitution of India.

2. Agricultural lands of village Varal came to be acquired for public purpose of Varal Irrigation Scheme by issuance of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, ('Act' for short) on August 16, 1998. Notices under Section 4(1) of the Act were served on petitioners Nos. 1 and 2 and one Gobar Raja Chhotala. In response to the notices under Section 4(1) of the Act, the petitioners submitted their objections against acquisition of their lands to respondent No.2 on September 29, 1998. In the objections filed by the petitioners under Section 5-A of the Act, it was stated that, as alternative land bearing Survey No.254/1 of village Varal was available, alignment of canal can be diverted and the petitioners' land bearing Survey no.253/1 can be saved, as it was more fertile and the petitioners were solely dependent on the agricultural income of the said land. It is the petitioners' grievance that, in spite of their filing objections under Section 5-A of the Act, they were not given personal hearing by respondent No.2 and declaration under Section 6 of the Act was made which was published in the official gazette on January 19,1999. The petitioners have, therefore, prayed that, as they were not given personal hearing in respect of their objections filed under Section 5-A of the Act, declaration made under Section 6 of the Act which was published in the official gazette on January 19,1999, and consequential procedure followed by the Land Acquisition Officer, deserve to be quashed and set aside.

3. Respondent No.2 has filed affidavit in reply, inter alia, contending that objections filed by the petitioners were considered before declaration under Section 6 was made. With regard to alternative land, respondent No.2 has stated that the Executive Engineer, Irrigation Department, District Panchayat, Bhavnagar, had considered alternative land suggested by the petitioners, but, it was not possible to divert canal from the land as suggested by the petitioners.

4. Further affidavit in reply is filed by respondent No.2 tendering his unconditional apology to the Court,

inter alia, submitting that, through oversight, in the main affidavit in reply, it was stated that opportunity of hearing under Section 5-A of the Act was given to the petitioners. It is further stated that, on verification on record, it was learnt that, in fact, the petitioners were not given any personal hearing.

5. In view of the admission made by respondent No.2 that the petitioners were not given personal hearing with regard to objections filed by them, declaration made under Section 6 of the Act deserves to be quashed and set aside as being violative of mandatory provision of Section 5-A of the Act.

6. As a result of foregoing discussion, this petition is allowed. Declaration made under Section 6 of the Act which was published in the official gazette on January 19, 1999 and consequential procedure followed by the Land Acquisition Officer, qua petitioners' land bearing Survey No.253/1 of village Varal, Taluka Sihor, Dist: Bhavnagar, is quashed and aside. Respondent No.2 is directed to give sufficient opportunity of being heard to the petitioners with regard to their objections dated September 29, 1998. It is clarified that this order will not preclude the respondents from proceeding further in pursuance of notification under Section 4 of the Act which was issued on August 16, 1998. Rule is made absolute to the aforesaid extent with no order as to costs.

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(swamy)